

## REMARKS

### I. Introduction

In response to the Office Action dated November 29, 2005, Applicants have amended claim 1 to more particularly point out and distinctly claim the subject matter of the invention. No new matter has been added. In view of the foregoing amendments and the following remarks, Applicants respectfully submit that all pending claims are in condition for allowance.

### II. Claim Rejections Under 35 U.S.C. § 102

Claims 1 – 8 and 10 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,815,226 to Lee. Applicants traverse this rejection for at least the following reasons.

Claim 1, as amended, recites a lower electrode formed to cover the top surface of the first oxygen layer and the outer portions of the side surface of the second oxygen barrier layer. At least this feature is not disclosed by Lee.

Apparently, the Examiner equates the assistant adhesive pattern 30, disclosed by Lee, with the first oxygen barrier layer of the present invention and equates the oxygen barrier pattern 70 of Lee with the second barrier layer of the present invention. Even if these elements were equivalent, Lee does not disclose a structure wherein the lower electrode is formed on the top surface of the first oxygen barrier and the outer portions of the side surfaces of the second oxygen barrier.

As depicted in Figure 7 of Lee, lower electrode pattern 40 is formed on assistant adhesive pattern 30 and the oxygen barrier pattern 70 is formed on the outer portions of the side surfaces of the lower electrode pattern 40 and the assistant adhesive pattern 30. In contrast, Figure 1 of the present invention depicts lower electrode 16 formed over the conductive oxygen barrier layer

14 and the insulating oxygen barrier layer 15, such that it covers the top surface of conductive oxygen barrier layer 14 and the outer portions of the side surfaces of the insulating oxygen barrier layer 15. Clearly, Lee fails to disclose such a structure.

Thus, as anticipation under 35 U.S.C. § 102 requires that each element of the claim in issue be found, either expressly described or under principles of inherency, in a single prior art reference, *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 USPQ 781 (Fed. Cir. 1983), and at a minimum, Lee fails to disclose a lower electrode formed to cover the top surface of the first oxygen layer and the outer portions of the side surface of the second oxygen barrier layer, it is clear that Lee does not anticipate claim 1.

Claims 2 – 8 and 10 depend from claim 1. Under Federal Circuit guidelines, a dependent claim is nonobvious if the independent claim upon which it depends is allowable because all the limitations of the independent claim are contained in the dependent claims, *Hartness International Inc. v. Simplimatic Engineering Co.*, 819 F.2d at 1100, 1108 (Fed. Cir. 1987). Accordingly, as claim 1 is patentable for the reasons set forth above, it is respectfully submitted that claims 2 – 8 and 10 are patentable at least by virtue of their dependency.

### **III. Claim Rejections Under 35 U.S.C. § 103**

Claim 9 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Lee. The Examiner admits that Lee fails to disclose the distance between the second oxygen barrier layer and the contact is between 0 and 100 nm, but alleges that this feature would have been obvious to one of ordinary skill in the art. Applicants respectfully disagree. However, even if this feature was obvious, Lee fails to disclose the features described above in reference to claim 1. Accordingly, as claim 1 is patentable for the reasons set forth above, it is respectfully submitted that claim 9 is patentable at least by virtue of its dependency.

**IV. Conclusion**

Accordingly, it is urged that the application is in condition for allowance, an indication of which is respectfully solicited.

If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicants' attorney at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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